

April 21, 2015

To: SDHSAA Board of Directors
From: John R. Hughes, Attorney At Law

Dear SDHSAA Board of Directors,

I was born and raised in Huron. I graduated from Huron High School in 1975, South Dakota State University in 1979, and the University of Nebraska College Law in 1982. I have practiced law in Sioux Falls for over 30 years. I urge you to void the SDHSAA transgender policy for a number of vitally important reasons.

First, the science of sex determination is clear and the assignment of X and Y-chromosomes are determined in utero. In other words, the natural process of human reproduction determines the gender of the child. Second, for those rare situations where genetic anomalies occur which are medically diagnosed to involve gender ambiguity, I am all for allowing these young people to "choose" gender, but that situation is exceedingly rare and can be accommodated outside of a state-mandated policy that applies to all students. Third, outside of these extremely rare and narrow parameters, no one can "choose their gender" any more than one can choose skin color.

This policy has nothing to do with science or medicine. This policy has all to do with perceived social issues that have no basis in science or medicine. Any policy such as this must be based upon science and medicine, just like we handle science and medicine in other matters of education and law. For example, one cannot "choose" to obey the law of gravity. Gravity is scientific fact. Gender is scientific fact.

Public school students are young people, with maturing and identity formation that progresses for years into post-secondary education, employment, and beyond. Introducing "gender" as a contested identity to public school students, virtually all of whom are 18 or under, contradicts a recent MIT article which states:

" According to recent findings, the human brain does not reach full maturity until at least the mid-20s. The most widely studied changes in young adulthood are in the prefrontal cortex, the area behind the forehead. The cluster of functions in the prefrontal cortex is sometimes called the 'executive suite' and includes the calibration of self-evaluation and regulation of emotion."

<http://hrweb.mit.edu/worklife/youngadult/brain.html>

There are many practical reasons as well to oppose the SDHSAA policy. The policy in its current form opens the door to lawsuits over gender discrimination in public school education. The SDHSAA policy places unfunded mandates on public schools and creates the need for accommodations in facilities and equipment.

- What about claims of one school district over another based upon denial of due process and equal protection of the law because one team has transgender students and the other does not?
- What of open enrollment being used to recruit transgender students as “super athletes?”
- How will this policy alter the competitive fairness and integrity of high school sports for boys and girls?
- Will hormone therapies resurrect the specter of Olympic athletes using chemicals for performance enhancement and how will the use of performance enhancing drugs be monitored and factored into sports activities and competition?
- What of students who choose NEITHER gender and call themselves “gender neutral?” Once we embark upon “gender selection” as a matter of personal choice, we must also accommodate those student athletes who do not identify with either the male or the female gender. The University of South Dakota recently announced that the university is making student housing available to NON-gender identifying students as well as transgender students. This is not idle speculation.
- This policy creates unpredictable legal liability for schools, through both compliance and non-compliance.

This policy is a bad idea. Perhaps a summer study commission would be appropriate to find out whether this policy is serving a need or is simply a "solution" in search of a non-existent problem.

Sincerely,

John R. Hughes
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Sioux Falls